

Oct 04 2021

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

UNITED STATES DISTRICT COURT
for the
Northern District of California

United States of America
v.

MARCO MARTINEZ

Case No. 3-21-mj-71556 MAG

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of March 29, 2021 in the county of San Francisco in the
Northern District of California, the defendant(s) violated:

Code Section

18 U.S.C. § 922(g)(1)

Offense Description

Felon in Possession of Ammunition

Maximum penalties:

10 years' imprisonment, \$250,000 fine; 3 years' supervised release; \$100
special assessment; forfeiture

This criminal complaint is based on these facts:

See attachment

☒ Continued on the attached sheet.

Approved as to form Mohit Gourisaria
AUSA Mohit Gourisaria

/s/

Complainant's signature

Payton Smith, ATF Special Agent

Printed name and title

Sworn to before me by telephone.

Date: October 4, 2021

City and state: San Francisco, CA

Thomas S. Hixson
Judge's signature

Hon. Thomas S. Hixson, U.S. Magistrate Judge

Printed name and title

**AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR
CRIMINAL COMPLAINT AND ARREST WARRANT**

I, Payton Smith, being duly sworn as a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), state as follows:

OVERVIEW AND PURPOSE OF AFFIDAVIT

I make this affidavit in support of the issuance of a criminal complaint and a federal arrest warrant for Marco MARTINEZ, identified hereinafter as "MARTINEZ." There is probable cause to believe that on or about March 29, 2021, MARTINEZ violated Title 18, United States Code, Section 922(g)(1), which prohibits a felon from possessing ammunition.

AFFIANT BACKGROUND

1. I am a Special Agent (SA) with Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and have been so employed since March 2020. I am presently assigned to the ATF San Francisco Metro Field Office in San Francisco, California, of the San Francisco Field Division. In that capacity, my primary geographic area of investigative operations includes the areas within San Francisco and San Mateo Counties. I am an investigative or law enforcement officer of the United States within the meaning of 18 U.S.C. § 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in 18 U.S.C. § 2516. I was trained as an ATF Special Agent at the ATF Special Agent Basic Training Academy, at the Federal Law Enforcement Training Center in Glynco, Georgia.

2. As an ATF Special Agent, I have been trained to conduct and participate in both state and federal investigations involving the trafficking of firearms, the use of firearms in furtherance of violent crime, and distribution of controlled substances. I have received training

in investigating and assisting in the prosecution of criminal street gangs engaged in illegal narcotics and firearms trafficking. I have received training and participated in various types of investigative techniques, including using electronic surveillance, undercover agents, and informants. I have participated in physical surveillance operations and have participated in the execution of federal and state search and arrest warrants.

3. The facts and information set forth in this affidavit are based on my personal observations, my training and experience, discussion with more experienced law enforcement officers/agents and, as specifically attributed below, information obtained from law enforcement officers and witnesses. To the extent that any information in the affidavit is not within my personal knowledge, it has been made available to me through reliable law enforcement sources, and I believe such information to be true. This affidavit is made for the sole purpose of demonstrating probable cause for the issuance of the requested complaint and does not set forth all my knowledge of, or investigation into, this matter. In addition, where I report information I learned from others or from reviewing documents and reports prepared by others, such information is recounted in sum and substance and in relevant part.

APPLICABLE LAW

4. The elements of Title 18, United States Code, Section 922(g)(1) are as follows:

(a) an individual knowingly possessed ammunition; (2) the ammunition had been shipped or transported from one state to another or between a foreign nation and the United States; (3) at the time the individual possessed the ammunition, he or she had been convicted of a crime punishable by imprisonment for a term exceeding one year; and (4) at the time the individual possessed the ammunition, the individual knew he or she had been convicted of a crime punishable by imprisonment for a term exceeding one year.

FACTS ESTABLISHING PROBABLE CAUSE

5. On March 29, 2021, a shooting occurred in the area around 24th Street and Mission Street in San Francisco, California. During the shooting, an individual, identified herein as “Victim 1,” died. Further, during the shooting, one of the shooters also suffered gunshot wounds.

6. San Francisco Police Department (SFPD) responded to the scene and found Victim 1 suffering from several gunshot wounds. SFPD officers recovered multiple fired cartridge casings from the area around 24th Street and Mission Street. While at the scene, SFPD dispatch advised responding officers that another victim of the shooting was in the area of 25th Street and Mission Street. SFPD officers responded to that area and located MARTINEZ who had multiple gunshot wounds. An SFPD officer accompanied MARTINEZ to San Francisco General Hospital. Upon arrival to San Francisco General Hospital, SFPD officers seized MARTINEZ’s clothing as evidence.

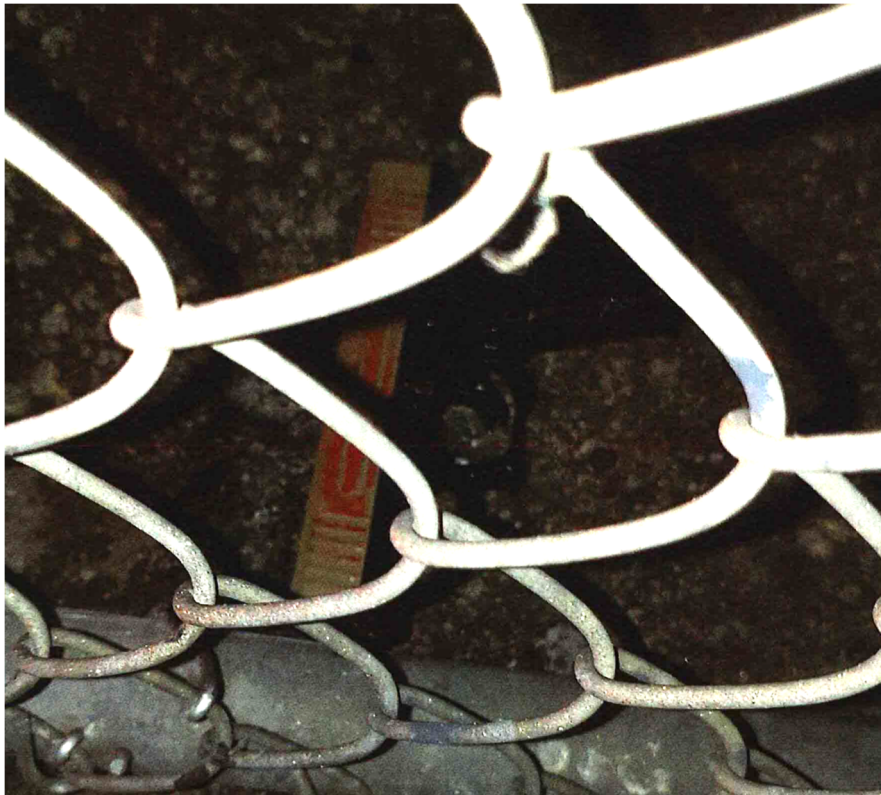
7. SFPD officers conducted a canvas of businesses in the area around 24th Street and Mission Street. During their canvas, SFPD officers spoke with employees and patrons of Taqueria San Jose, located at 2830 Mission Street. Witnesses at the business told SFPD officers that an individual came into the restaurant, left items of clothing on the back patio of the restaurant and exited the business. SFPD officers located a beanie and a dark blue jacket with blood on it and bullet holes through it in the back of the restaurant. The items were retained as evidence by SFPD officers.

8. SFPD officers reviewed video footage from a surveillance system at Taqueria San Jose and observed the following: SFPD officers observed MARTINEZ run into the restaurant.

SFPD officers noted that MARTINEZ's face appeared to be grimacing in pain. MARTINEZ was observed wearing a black beanie, dark blue jacket, light colored pants, and black shoes.

MARTINEZ was observed running to the back patio of the restaurant and throwing an object over a fence. MARTINEZ was then observed taking off his beanie and jacket and discarding them in the back patio of the restaurant. MARTINEZ lifted his shirt and SFPD observed multiple gunshot wounds on his body.

9. After reviewing the video footage, SFPD officers searched the back patio of the restaurant and located a black, semi-automatic, personally made firearm ("PMF"), more commonly referred to as a "Ghost Gun" Additionally, SFPD officers located a tan, high-capacity magazine (*See Image 1 below*). The magazine was loaded and had blood on it. The firearm and magazine were retained as evidence by SFPD (*see images below*).





10. SFPD Crime Laboratory Criminalists analyzed the PMF style firearm for DNA and found the following: there is very strong support that MARTINEZ's DNA was on the firearm.

11. SFPD Crime Laboratory technicians analyzed the Sig Sauer 9mm ammunition that was loaded into the chamber of the PMF style firearm and found the following: there is very strong support that MARTINEZ's DNA was on the ammunition.

12. I have reviewed MARTINEZ's criminal history and determined that prior to March 29, 2021, he was convicted of a crime punishable by imprisonment for a term exceeding one year. Specifically, on or about March 20, 2020, MARTINEZ was convicted of Robbery in the Second Degree, and sentenced to three (3) years imprisonment.

13. ATF conducted an investigation into the 9mm Sig Sauer ammunition found in the PMF style firearm and magazine. ATF determined that the ammunition was not manufactured in California and therefore had been shipped or transported from one state to another and/or between a foreign nation and the United States before coming to California.

REQUEST TO SEAL

14. The ATF's criminal investigation of MARTINEZ is ongoing. In addition, it is my belief that prematurely revealing the specific details, facts, and reasons for the proposed charges and arrest, as detailed in this affidavit, may cause flight from prosecution, destruction of or tampering with evidence, intimidation of potential witnesses, and otherwise seriously jeopardize the investigation (e.g., prompting changes in behavior). Accordingly, I request that the Court issue an order that the criminal complaint, this affidavit in support of the application for criminal complaint and arrest warrant, the application for the criminal complaint and arrest warrant, and the attachments thereto, along with the order itself, be filed under seal until further order of the Court.

CONCLUSION

15. On the basis of my participation in this investigation and the information summarized above, I have probable cause to believe that on or about March 29, 2021, in the Northern District of California, MARTINEZ violated one count of Title 18, United States Code, Section 922(g)(1) Felon Prohibited Person in Possession of Ammunition.

/s/ Payton Smith
PAYTON SMITH
Special Agent
Bureau of Alcohol, Tobacco, Explosive, and
Firearms

Sworn to before me over the telephone and signed by me pursuant to Fed. R. Crim. P. 4.1 and 4(d) this 4th day of October 2021.


HONORABLE THOMAS S. HIXSON
United States Magistrate Judge